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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G)

Misc. Appeal {C} No. 258 /2007 Single Bench

APPELLANT

Bajaj Allianz General Insurance Company Ltd. Through Branch Manager Branch Office,Shiv Mohan Bhawan,Pandri, Raipur Tahsil and District Raipur (C.G.) **(N.A. No. 2 Insurer)**

Versus

RESPONDENTS

P.F. No. 557/07 Presented by Shri Ramprasad Dubey dated 18/12/07

1. Likhanram S/o Shri Revalal Parmar, Aged about 03 years, Minor Represented Through natural guardian father Shri Revalal S/o Shri Madhoram Marar, R/o Singarpur, Tahsil Khairagarh, District Rajnandgaon (C.G.) **(Claimant)**

2. Ramesh Kumar @ Lala Tiwari, S/o Shri Chandrapal Tiwari, Aged about 41 years, R/o Bahadurganj, Ward No. 14, Kawardha, District Kabirdham (C.G.)
(N.A. No.1 Driver & Owner)

MEMORANDUM OF APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT 1988

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A.F.R. (28)

28/02/07

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	28-02-2007 Shri Sachin Singh Rajput, counsel for the appellant. Heard on I.A.No.597/2007 which is an application for exemption from filing certified copy of the order passed under Section-170 of the Motor Vehicle Act, 1988. Shri Sachin Singh Rajput, learned counsel for the appellant submitted that the appellant-Insurer did file an application under Section-170 of the Motor Vehicle Act for permission to contest the claim on all grounds that are available to person against whom the claim are made but no order was passed thereon by the learned Motor Accident Claims Tribunal. It is really unfortunate that the learned Motor Accident Claims Tribunal did not pass any order on the application filed under Section-170 of the Motor Vehicle Act, 1988. It is the duty of the Motor Accident Claims Tribunal to pass a judicial order under Section-170 of the Motor Vehicle Act after satisfying itself that (a) there is collusion between the person making the claim and the person against whom the claim is made, or (b) a person against whom the claim is made has failed to contest the claim. It is only upon being satisfied that either of the two conditions mentioned above exist that the right to contest the application on all grounds that are available to any person against whom the claim has been made, may be granted to the Insurer. It is being noticed that the Motor Accident Claims Tribunals are extremely casual in their approach while deciding the application	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

under Section-170 of the Motor Vehicle Act. The learned Motor Accident Claims Tribunal should hasten to allow the application filed under Section-170 of Motor Vehicle Act, 1988 in a casual manner. In the present case, the application having been filed by the applicant under Section-170 of the Motor Vehicle Act, 1988, the learned Motor Accident Claims Tribunal ought to have decided the application in the above situation. The maxim "actus curiae neminem gravabit" comes into play in such a situation that no party could be forced to suffer for the inaction of the Court or its omission to act according to the procedure established by law.

A perusal of the copy of the application dated 16-06-2006 under Section-170 of Motor Vehicle Act, 1988 filed by the appellant/Insurer before the learned Motor Accident Claims Tribunal does not disclose any ground for permitting the insurer to contest the application under Section-166 of Motor Vehicle Act on all grounds. The owner/driver of the vehicle had filed written statement denying all allegations. The insurance of the Motor cycle was not disputed by the appellant. The contention that the owner/driver of the vehicle was not co-operating with the appellant/Insurer was superfluous and did not fall under either of the categories (a) and (b) of Section-170 of Motor Vehicle Act and therefore could not be accepted. Thus no case was made out to grant permission to the appellant/Insurer to contest the application on all grounds available to the owner. The application dated 16-06-2006 was thus liable to be rejected.

In the circumstance mentioned above, since no order under Section-170 of Motor Vehicle Act was passed by the Motor Accident

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Claims Tribunal, I.A.No.597/2007 for exemption from filing certified copy of the order passed under Section-170 of the Motor Vehicle Act, 1988 is allowed.

Also heard on admission.

Brief facts are that the applicant Likhan Ram, aged about 3 years was being taken by his aunt for call of nature at 6 P.M. As they reached near the bridge at Gopalpur Khurd, the respondent No.2 herein drove motorcycle bearing Registration No.C.G.-09-A/2492 in a rash or negligent manner and dashed against the minor child i.e. the applicant resulting in fracture in both hands. Due to the injury, humorous bone of the right hand was fractured. Due to mal union of the bone, the right palm of the applicant was rendered useless. The learned Motor Accident Claims Tribunal awarded total compensation of Rs.2,15,000/-, the break-up of which is as follows:-

(1)	Towards loss of earning capacity -	Rs. 90,000/-
(2)	Expenses incurred during treatment-	Rs. 10,000/-
(3)	Expenses incurred towards attendant and healthy diet -	Rs. 5,000/-
(4)	Expenses incurred towards pain and Suffering -	Rs. 10,000/-
(5)	Expenses towards future Treatment	Rs. 1,00,000/-
	TOTAL -	**Rs. 2,15,000/-**

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –4–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

A total sum of Rs. 2,15,000/- was awarded as compensation. The learned M.A.C.T. held that the right hand being the most important part of a person's body, the applicant would continue the treatment and although the father of the applicant had stated that a sum of Rs.3 lakh would be required towards expenses in future treatment, the learned Motor Accident Claims Tribunal awarded a sum of Rs.1 Lakh only.

Although the appellant/Insurer could not be heard on quantum since his application under Section-170 of Motor Vehicle Act was liable to rejection, yet in the facts and circumstances of the case I shall proceed to consider whether the compensation awarded by the Motor Accident Claims Tribunal is just and reasonable compensation. The only ground urged by learned counsel for the appellant-Insurer during arguments in this appeal is that an amount of Rs.1 Lakh awarded by the learned Motor Accident Claims Tribunal for future treatment was excessive and wholly unjustified. The claimant is now a young boy of 5 years. Due to the accident, the palm of his right hand has been completely rendered useless and using his damaged (tilted) fingers he cannot even lift a spoon due to mal union of the humorous bone of the right hand. Permanent disability has been caused. Father of the claimant testified that treatment is continuing and claimed Rs.3 Lakh towards future treatment. Merely because Medical Officer Dr. R Mandale A.W.-2 has stated that there is no possibility of cure it cannot be said that the father of the applicant would not take any chances and would not incur any expenditure towards treatment in

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

future because so much medical advancement has taken place. Since the right hand of a young boy has been completely rendered useless due to the accident, it is safe to presume that his father would continue to avail such advance treatment in future so as to enable his minor child to make use of his right hand as he grows. In that context, the reasoning on which compensation of Rs.1 Lakh was awarded by the learned Motor Accident Claims Tribunal for future medical expenses cannot be faulted with.

In this view of the matter, there is no substance in this appeal which is accordingly dismissed at the stage of admission.

The application M.(C.)F.No.377/2007 for grant of stay also stands dismissed.

Certifed copy as per rules.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Tumane

P.T.O.